

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE TORRES GARCIA,

Petitioner,

v.

JEHOVA PUTIN, et al.,

Respondents.

No. 1:21-cv-00817-NONE-JLT (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING CLERK OF COURT
TO ASSIGN DISTRICT JUDGE FOR
PURPOSE OF CLOSING CASE AND THEN
CLOSE CASE AND DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY

(Doc. No. 9)

Petitioner is a state prisoner proceeding in propria persona with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On July 28, 2021, the assigned magistrate judge issued findings and recommendations recommending that the pending petition be dismissed due to the petitioner's failure to comply with court orders and failure to prosecute. (Doc. No. 9.) The findings and recommendations were served upon all parties and contained notice that any objections were to be filed within ten days from the date of service of that order. To date, no party has filed objections.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the court has conducted a de novo review of the case. Having carefully reviewed the entire file, the court concludes that the findings and recommendations are supported by the record and proper analysis.

1 In addition, the court declines to issue a certificate of appealability. A state prisoner
2 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of
3 his petition, and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537
4 U.S. 322, 335-336 (2003); *see also* 28 U.S.C. § 2253. If a court denies a petitioner's petition, the
5 court may only issue a certificate of appealability when a petitioner makes a substantial showing
6 of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To make a substantial showing,
7 the petitioner must establish that "reasonable jurists could debate whether (or, for that matter,
8 agree that) the petition should have been resolved in a different manner or that the issues
9 presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529
10 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

11 In the present case, the court finds that petitioner has not made the required substantial
12 showing of the denial of a constitutional right to justify the issuance of a certificate of
13 appealability. Reasonable jurists would not find the court's determination that petitioner is not
14 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to
15 proceed further. Thus, the court **DECLINES** to issue a certificate of appealability.

16 Accordingly, the court orders as follows:

- 17 1. The findings and recommendations, filed July 28, 2021 (Doc. No. 9), are
18 **ADOPTED IN FULL**;
- 19 2. The petition for writ of habeas corpus is **DISMISSED**;
- 20 3. The Clerk of the Court is **DIRECTED** to assign a district judge to this case for the
21 purpose of closing the case and then to close the case; and
- 22 4. The court **DECLINES** to issue a certificate of appealability.

23 **IT IS SO ORDERED.**

24 Dated: **October 13, 2021**

25 
UNITED STATES DISTRICT JUDGE